

A black silhouette of the state of Alaska is positioned in the upper left, partially overlapping the blue vertical bar and the title text.

State of Alaska

Special Systems Statutes and Regulations

January
2005

Including the:

- ✧ *Judicial Retirement System,*
- ✧ *National Guard, Naval Militia Retirement System, and*
- ✧ *Elected Public Officers Retirement System*

*The regulations in this handbook
are current as of December 2004.
Amendments occurring after that date may
be found in the Alaska Statutes and
Alaska Administrative Code.*

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TITLE 22. JUDICIARY

CHAPTER 22.25. RETIREMENT AND DEATH BENEFITS

Cross References - For group life and health insurance for public officers and employees, see AS 39.30.090. For employment benefits for judicial employees, see AS 22.20.037.

Administrative Code - For judicial retirement system, see 2 AAC 37, art. 1.

History Reports - For governor's transmittal letter for ch. 92, SLA 2004 (SB 232), making a series of amendments to this chapter to ensure compliance with federal Internal Revenue Service changes that maintain the retirement system as a qualified plan, see 2003 Senate Journal 1722-1723.

ARTICLE 01. JUSTICES AND JUDGES

SEC. 22.25.010. MANDATORY AND VOLUNTARY RETIREMENT OF JUSTICES AND JUDGES.

(a) A justice or judge shall be retired on the date that the justice or judge reaches the age of 70. A justice or judge is eligible for retirement pay with five or more years of service at the time of retirement as a justice or judge.

(b) A justice or judge may be retired for incapacity as provided in this section. A justice or judge is eligible for retirement pay with two or more years of service at the time of retirement for incapacity. The effective date of retirement under this subsection is the first day of the month coinciding with or after the date that the governor files written notice with the commissioner of administration that a designated justice or judge was retired for incapacity. A duplicate copy of the notice shall be filed with the judicial council.

(c) A justice or judge who served for a period of five years may file with the governor a written application for retirement which contains a sworn statement of service and a sworn statement of the incapacity of the justice or judge to efficiently perform the judicial duties. When an application is filed, the governor shall appoint a board of three persons to inquire into the circumstances, and may, upon the board's recommendation, retire the justice or judge. The effective date of the retirement shall be as provided in (b) of this section.

(d) A justice or judge may voluntarily retire at any time and shall have a vested right to accrued retirement pay if the justice or judge has served five or more years. Retirement pay may not commence until the justice or judge has reached age 60; except that an actuarially equivalent retirement pay may be commenced after the justice or judge has reached age 55 or upon 20 years' service as a justice or judge. The provisions of (b) of this section are an exception to this rule. A justice or judge desiring to retire under this subsection shall file with the governor a notice of that desire, together with a sworn statement of the facts establishing eligibility to retire. The governor shall certify those facts to the commissioner of administration and declare, in writing, the eligibility or ineligibility for retirement of the justice or judge. If a justice or judge is eligible to receive retirement pay at the time of retirement, the retirement pay shall commence on the first day of the month coinciding with or after the date the written declaration of the governor is filed with the commissioner of administration. If a justice or judge is not eligible to receive retirement pay at the time of retirement, the retirement pay shall commence on the first day of the month the justice or judge reaches age 60 or the month the justice or judge becomes eligible for an actuarial equivalent if application was made for this option.

(e) [Repealed, Sec. 16 ch 83 SLA 1967].

(f) In the computation of service for retirement under this chapter, the time served by a justice or judge of any court is added to the time served, if any, on any other court. All service rendered by a justice or judge, including service as a magistrate or deputy magistrate, before July 1, 1967, shall be included in the computation.

(g) [Repealed, Sec. 47 ch 59 SLA 2002].

History - (Sec. 1 ch 102 SLA 1963; am Sec. 6 - 10, 16 ch 83 SLA 1967; am Sec. 1 ch 160 SLA 1972; am Sec. 2 ch 196 SLA 1976; am Sec. 18 ch 12 SLA 1980; am Sec. 12 ch 38 SLA 1987; am Sec. 47 ch 59 SLA 2002)

Amendment Notes - The 2002 amendment, effective June 20, 2002, repealed subsection (g).

AG Opinions - The standards for determining incapacity must be sufficiently strict that the judicial retirement system continues to serve as an incentive encouraging judges and justices to continue in state service at least until age 60. Dec. 27, 1982 Op. Att'y Gen.

The three-person panel appointed by the governor under (c) should probably not include the attorney general or any of his employees since their duties would include defending against a justice's appeal of an adverse finding. There is no reason why any other state employee who has no personal interest in the outcome could not be appointed to the panel, unless the appointment conflicted with the

individual's duties or with a statute or regulation applicable to that employee. It is suggested that the panel include at least one doctor and one private attorney or former judge or justice. Dec. 27, 1982 Op. Att'y Gen.

Collateral Refs - Mandatory retirement of public officer or employee based on age. 81 ALR3d 811.

SEC. 22.25.011. CONTRIBUTIONS OF JUDGES AND JUSTICES.

Each justice and judge appointed after July 1, 1978, is a member under the judicial retirement system as of the date of the justice's or judge's appointment and shall contribute seven percent of the base annual salary received by the justice or judge to the judicial retirement system. Contributions shall be made for all creditable service under this chapter up to a maximum of 15 years. This contribution is made in the form of a deduction from compensation, at the end of each payroll period, and is made even if the compensation paid in cash to the justice or judge is reduced below the minimum prescribed by law. The contributions shall be deducted from the justice's or judge's compensation before the computation of applicable federal taxes and shall be treated as employer contributions under 26 U.S.C. 414(h)(2). A member may not have the option of making the payroll deduction directly in cash instead of having the contribution picked up by the employer. Each justice and judge is considered to consent to the deduction from compensation. Payment of compensation less the deduction constitutes a full discharge of all claims and demands for the services rendered by the justice or judge during the period covered by the payment, except as to the benefits provided for under this chapter. The contributions shall be credited to the judicial retirement fund established in accordance with AS 22.25.048.

History - (Sec. 7 ch 80 SLA 1978; am Sec. 30 ch 137 SLA 1982; am Sec. 17 ch 59 SLA 2002; am Sec. 15 ch 92 SLA 2004)

Cross References - For a provision relating to a limitation of the base annual salary for a justice or judge first employed in the judicial retirement system on or after July 1, 1996, see AS 22.25.020.

Amendment Notes - The 2002 amendment, effective June 20, 2002, inserted "at the end of each payroll period" in the third sentence and added the fourth and fifth sentences.

The 2004 amendment, effective June 26, 2004, inserted "is a member under the judicial retirement system as of the date of the justice's or judge's appointment and" in the first sentence.

Editors Notes - Section 32, ch. 12, SLA 1980 provides: "A judge of the court of appeals is not required to contribute to the retirement system under AS 22.25.011 if, at the time of his appointment to the court of appeals, he holds a judicial office

to which the retirement benefits of AS 22.25 apply and to which he was appointed before July 1, 1978."

AG Opinions - Only a justice or judge who was appointed for the first time after July 1, 1978 must contribute to the retirement system. May 18, 1982 Op. Att'y Gen.

Decisions - Constitutionality. - The establishment of a class of justices and judges appointed after July 1, 1978 is not a violation of equal protection. *Hudson v. Johnstone*, 660 P.2d 1180 (Alaska 1983).

SEC. 22.25.012. RETIREMENT BENEFITS OF ADMINISTRATIVE DIRECTOR.

(a) An administrative director of the Alaska court system appointed under art. IV, sec. 16 of the state constitution is a member under the judicial retirement system as of the date of the administrative director's appointment and is entitled to retirement benefits under this chapter on the terms and conditions applicable to a superior court judge appointed after July 1, 1978, except that an administrative director may receive retirement benefits only with service as administrative director for 10 or more years.

(b) An administrative director who vacates the office of administrative director for any reason and who has not at that time accrued 10 years of credited service under this chapter is entitled to a refund of contributions to the judicial retirement system together with interest.

(c) An administrative director who withdraws from the judicial retirement system under (b) of this section is eligible for membership in the public employees' retirement system (AS 39.35) and shall receive credited service in that system for service rendered as administrative director. To be eligible for membership in the public employees' retirement system under this subsection, the administrative director must contribute to the public employees' retirement system

(1) the amount that would have been contributed if the administrative director had been a member during the period of the membership in the judicial retirement system; and

(2) any contributions for service as administrative director refunded from the public employees' retirement system at the time the administrative director became a member of the judicial retirement system.

History - (Sec. 7 ch 146 SLA 1980; am Sec. 16 ch 92 SLA 2004)

Amendment Notes - The 2004 amendment, effective June 26, 2004, inserted "a member under the judicial retirement system as of the date of the administrative director's appointment and is" in the first sentence of subsection (a).

SEC. 22.25.020. RETIREMENT PAY.

Except as provided in AS 22.25.023(b), a retired justice or judge eligible for retirement pay shall receive from the date of eligibility until death monthly retirement pay equal to five percent per year of service, to a maximum of 75 percent, of the monthly salary authorized for justices and judges, respectively, at the time each retirement payment is made. For a justice or judge who was first employed in this retirement system on or after July 1, 1996, base annual salary does not include remuneration in excess of the limitations set out in 26 U.S.C. 401(a)(17) (Internal Revenue Code).

History - (Sec. 1 ch 102 SLA 1963; am Sec. 11 ch 83 SLA 1967; am Sec. 21 ch 68 SLA 2000; am Sec. 18 ch 59 SLA 2002)

Amendment Notes - The 2000 amendment, effective August 20, 2000, added the second sentence.

The 2002 amendment, effective June 20, 2002, in the first sentence added "Except as provided in AS 22.25.023(b)" at the beginning and substituted "retirement pay" for "compensation."

History Reports - For report on ch. 83, SLA 1967 (HB 141), see 1967 House Journal, pp. 339-340.

SEC. 22.25.021. DISTRIBUTION REQUIREMENTS.

(a) The entire interest of a member must be distributed or must begin to be distributed not later than the member's required beginning date.

(b) If a member dies after the distribution of the member's interest has begun but before the distribution has been completed, the remaining portion of the interest shall continue to be distributed at least as rapidly as under the method of distribution being used before the member's death.

(c) If a member has made a distribution election and dies before the distribution of the member's interest begins, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death. However, if any portion of the member's interest is payable to a designated beneficiary, distributions may be made over the life of the designated beneficiary or over a period certain not greater than the life expectancy of the designated beneficiary, commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died, and, if the designated beneficiary is the member's surviving spouse, the date distributions are required to begin may not be earlier than the later of December 31 of the calendar year (1) immediately following

the calendar year in which the member died, or (2) in which the member would have attained 70 1/2 years of age, whichever is earlier. If the surviving spouse dies after the member but before payments to the spouse have begun, the provisions of this subsection apply as if the surviving spouse were the member. An amount paid to a child of the member will be treated as if it were paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(d) If a member has not made a distribution election before the member's death, the member's designated beneficiary must elect the method of distribution not later than December 31 of the calendar year (1) in which distributions would be required to begin under this section, or (2) that contains the fifth anniversary of the date of death of the member, whichever is earlier. If the member does not have a designated beneficiary or if the designated beneficiary does not elect a method of distribution, distribution of the member's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(e) For purposes of (c) of this section, distribution of a member's interest is considered to begin (1) on the member's required beginning date, or (2) if the designated beneficiary is the member's surviving spouse and the surviving spouse dies after the member but before payments to the spouse have begun, on the date distribution is required to begin to the surviving spouse. If distribution in the form of an annuity irrevocably commences to the member before the required beginning date, the date distribution is considered to begin is the date that the distribution actually commences.

(f) Notwithstanding any contrary provisions of this chapter, the requirements of this section apply to all distributions of a member's interest and take precedence over any inconsistent provisions of this chapter.

(g) All distributions required under this section are determined and made in accordance with 26 U.S.C. 401(a)(9) and regulations adopted under that statute, including any minimum distribution incidental benefit requirement.

(h) Unless otherwise specified, the provisions of this section apply to calendar years beginning on or after January 1, 1989.

(i) In this section,

(1) "designated beneficiary" means the individual who is designated as the beneficiary under the system in accordance with 26 U.S.C. 401(a)(9) and regulations adopted under that statute;

(2) "required beginning date" means the first day of April of the calendar year following the calendar year in which the member either attains 70 1/2 years of age or actually retires, whichever is later.

History - (Sec. 19 ch 59 SLA 2002)

Effective Date Notes - Section 50, ch. 59, SLA 2002 makes this section effective June 20, 2002, in accordance with AS 01.10.070(c).

Editors Notes - Section 49(a)(2), ch. 59, SLA 2002, provides that this section is retroactive to January 1, 1989.

SEC. 22.25.022. ROLLOVER DISTRIBUTIONS AND ROLLOVER CONTRIBUTIONS.

(a) A distributee may elect, at the time and in the manner prescribed by the administrator, to have all or part of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in the direct rollover.

(b) The system does not accept contributions of eligible rollover distributions.

(c) In this section,

(1) "direct rollover" means the payment of an eligible rollover distribution by the system to an eligible retirement plan specified by a distributee who is eligible to elect a direct rollover;

(2) "distributee" means a member or a beneficiary who is the surviving spouse of the member;

(3) "eligible retirement plan"

(A) means

(i) an individual retirement account described in 26 U.S.C. 408(a);

(ii) an individual retirement annuity defined in 26 U.S.C. 408(b);

(iii) an annuity plan described in 26 U.S.C. 403(a);

(iv) a qualified trust described in 26 U.S.C. 401(a);

(v) on and after January 1, 2002, an annuity plan described in 26 U.S.C. 403(b); or

(vi) on or after January 1, 2002, a governmental plan described in 26 U.S.C. 457(b); and

(B) notwithstanding (A) of this paragraph, means, with respect to distributions made before January 1, 2002, an individual retirement account or an individual retirement annuity account described or defined in 26 U.S.C. 408 in the case of an eligible rollover distribution to a beneficiary who is the surviving spouse of a member;

(4) "eligible rollover distribution" means a distribution of all or part of a total account to a distributee, except for

(A) a distribution that is one of a series of substantially equal installments payable not less frequently than annually over the life expectancy of the distributee or the joint and last survivor life expectancy of the distributee and the distributee's designated beneficiary, as defined in 26 U.S.C. 401(a)(9);

(B) a distribution that is one of a series of substantially equal installments payable not less frequently than annually over a specified period of 10 years or more;

(C) a distribution that is required under 26 U.S.C. 401(a)(9);

(D) the portion of any distribution that is not includable in gross income;

(E) a distribution made on or after January 1, 2002, that is on account of hardship; and

(F) other distributions that are reasonably expected to total less than \$200 during a year.

History - (Sec. 19 ch 59 SLA 2002)

Effective Date Notes - Section 50, ch. 59, SLA 2002 makes this section effective June 20, 2002, in accordance with AS 01.10.070(c).

Editors Notes - Section 31, ch. 92, SLA 2004, adding subsection (f)(2) to sec. 49, ch. 59, SLA 2002, makes the 2002 enactment of this section retroactive to January 1, 1993. See Sec. 31, ch. 92, SLA 2004, in the 2004 Temporary and Special Acts.

SEC. 22.25.023. LIMITATION ON BENEFITS; MAXIMUM ANNUAL COMPENSATION.

(a) Notwithstanding any other provisions of this chapter, the projected annual benefit provided by this chapter and the benefit from all other defined benefit plans required to be aggregated with the benefits from this system under the provisions of 26 U.S.C. 415 may not increase to an amount in excess of the amount permitted under 26 U.S.C. 415 at any time. In the event that any accrued

benefit of a member exceeds the limitation of 26 U.S.C. 415 for a limitation year, the system shall make any necessary remedial action to correct an excess accrued benefit. The provisions of 26 U.S.C. 415, and the regulations adopted under that statute, as applied to qualified defined benefit plans of governmental employers are incorporated as part of the terms and conditions of the system. This subsection shall apply to any member of this system.

(b) In this subsection, for system fiscal years beginning on or after January 1, 1998, and for purposes of 26 U.S.C. 415(b)(3) and the regulations adopted under that statute, "salary" includes any amount that is contributed by the employer under a salary reduction agreement and that is not includable in the member's gross income under 26 U.S.C. 125, 132(f)(4), 402(e)(3), 402(h), or 403(b) and is limited to compensation that is actually paid to a member during the determination period, which is the fiscal year of the system.

History - (Sec. 19 ch 59 SLA 2002)

Effective Date Notes - Section 50, ch. 59, SLA 2002 makes this section effective June 20, 2002, in accordance with AS 01.10.070(c).

Editors Notes - Section 49(c)(2), ch. 59, SLA 2002, provides that subsection (b) is retroactive to January 1, 1998.

SEC. 22.25.025. ADMINISTRATION; FEDERAL QUALIFICATION REQUIREMENTS.

(a) The commissioner of administration is responsible for the administration of the judicial retirement system. The system is intended to qualify as a governmental plan established and maintained by the government of this state for the state's employees, as permitted under 26 U.S.C. 414(d). The commissioner shall publish an information handbook for the system at intervals as the commissioner considers appropriate.

(b) An amendment to this chapter does not provide a person with a vested right to a benefit if the Internal Revenue Service determines that the amendment will result in disqualification of the plan under the Internal Revenue Code.

History - (Sec. 8 ch 146 SLA 1980; am Sec. 20 ch 59 SLA 2002; am Sec. 17 ch 92 SLA 2004)

Amendment Notes - The 2002 amendment, effective June 20, 2002, added the second and third sentences.

The 2004 amendment, effective June 26, 2004, added subsection (b).

SEC. 22.25.027. REGULATIONS.

(a) The commissioner of administration may adopt regulations to implement this chapter. Regulations adopted by the commissioner under this chapter relate to the internal management of state agencies and their adoption is not subject to AS 44.62 (Administrative Procedure Act).

(b) Notwithstanding (a) of this section, a regulation adopted under this chapter shall be published in the Alaska Administrative Register and Code for informational purposes. Each regulation adopted under this chapter must conform to the style and format requirements of the drafting manual for administrative regulations that is published under AS 44.62.050.

(c) At least 30 days before the adoption, amendment, or repeal of a regulation under this chapter, the commissioner of administration shall provide notice of the action that is being considered. The notice shall be

(1) posted in public buildings throughout the state;

(2) published in one or more newspapers of general circulation in each judicial district of the state;

(3) mailed to each person or group that has filed a request for notice of proposed action with the commissioner of administration; and

(4) furnished to each member of the legislature and to the Legislative Affairs Agency.

(d) Failure to mail notice to a person as required under (c)(3) of this section does not invalidate an action taken by the commissioner of administration.

(e) The commissioner may hold a public hearing on a proposed regulation.

(f) A regulation adopted under this chapter takes effect 30 days after adoption by the commissioner of administration.

(g) Notwithstanding the other provisions of this section, a regulation may be adopted, amended, or repealed, effective immediately, as an emergency regulation by the commissioner of administration. For an emergency regulation to be effective the commissioner of administration must find that the adoption, amendment, or repeal of the regulation is necessary for the immediate preservation of the orderly operation of the judicial retirement system. The commissioner of administration shall, within 10 days after adoption of an emergency regulation, give notice of the adoption under (c) of this section. An emergency regulation adopted under this subsection may not remain in effect more than 90 days unless the commissioner of administration complies with

the procedures set out in this section and adopts the regulation as a permanent regulation.

(h) In this section "regulation" has the meaning given in AS 44.62.640(a).

History - (Sec. 8 ch 146 SLA 1980; am Sec. 2 ch 35 SLA 1984)

Revisors Notes - Minor word changes were made in subsection (h) in 1984.

SEC. 22.25.030. SURVIVORS' BENEFITS.

(a) Upon the death of a justice or judge who has served for at least two years, the surviving spouse is entitled to receive survivors' benefits equal to one-half of the monthly retirement pay the justice or judge would thereafter have been entitled to receive if retired at the time of death. If at death the justice or judge was not yet entitled to retirement pay, or was or would have been entitled to less than 60 percent of the monthly salary authorized for the office, the surviving spouse is entitled to monthly survivors' benefits equal to 30 percent of the salary authorized for justices or judges, respectively, at the time each monthly payment is made.

(b) To be eligible for the survivors' benefits, the surviving spouse must have been married to the justice or judge for at least one year immediately preceding the death of the justice or judge. The benefits continue until the death of the surviving spouse.

(c) If there is no surviving spouse, or if the surviving spouse does not meet the requirements of (b) of this section, or upon the death of the surviving spouse, the surviving dependent child or children of the justice or judge are entitled to receive, in equal shares, 50 percent of the amount of the survivors' benefits specified under (a) of this section.

(d) The surviving child or children are entitled to the survivors' benefits under (c) of this section during the period of their dependency. Dependency exists with respect to any child of a justice or judge who is either (1) a minor under the laws of Alaska, (2) under the age of 23 and is a student attending on a full-time basis an accredited educational or technical institution recognized by the state Department of Education and Early Development, or (3) so mentally or physically incapacitated as to be unable to provide for self care.

(e) If there are both an eligible surviving spouse and surviving dependent children, but who reside in separate households, the surviving spouse and dependent children will share equally in the benefits payable under (a) of this section.

(f) The rights of a surviving spouse or dependent child under this section are subject to the rights of a previous spouse or a dependent under a qualified domestic relations order.

(g) If there is no surviving spouse or surviving dependent child entitled to benefits under this section or if after payment of all survivors' benefits due under this section, less than the amount of contributions made by the justice or judge to the system under AS 22.25.011 and interest credited has been paid, the difference between the amount of contributions and the amount of benefits paid shall be paid to the designated beneficiary of the justice or judge. If there is no designated beneficiary or if no designated beneficiary survives the justice or judge, the balance of the contributions and interest credited shall be paid to the

- (1) surviving spouse; or, if there is none surviving,
- (2) surviving children in equal parts; or, if there is none surviving,
- (3) surviving parents in equal parts; or, if there is none surviving,
- (4) justice's or judge's estate.

History - (Sec. 1 ch 102 SLA 1963; am Sec. 12 ch 83 SLA 1967; am Sec. 2 ch 160 SLA 1972; am Sec. 8, 9 ch 82 SLA 1986; am Sec. 20, 21 ch 117 SLA 1986; am Sec. 20 ch 106 SLA 1988; am Sec. 21 ch 59 SLA 2002)

Revisors Notes - In 1999, "Department of Education" was changed to "Department of Education and Early Development" in (d) of this section in accordance with Sec. 89, ch. 58, SLA 1999.

Amendment Notes - The 2002 amendment, effective June 20, 2002, in subsection (a) substituted "survivor's benefits" for "monthly compensation" in the first sentence and "monthly survivor's benefits" for "monthly compensation" in the second sentence.

SEC. 22.25.033. CLAIM FOR SURVIVOR'S BENEFITS.

A person claiming entitlement to benefits payable under this chapter as a consequence of a justice's or judge's death shall provide the commissioner of administration with a marriage certificate, divorce or dissolution judgment, or other evidence of entitlement. Documents establishing entitlement may be filed with the commissioner immediately after a change in the justice's or judge's marital status. If the commissioner does not receive notification of a claim before the date 10 days after the justice's or judge's death, the person claiming

entitlement is not entitled to receive from the Department of Administration any benefit already paid by the commissioner under this chapter.

History - (Sec. 21 ch 106 SLA 1988)

SEC. 22.25.035. RIGHTS UNDER A QUALIFIED DOMESTIC RELATIONS ORDER.

A former spouse who was married to a justice or judge for at least one year shall be treated as a spouse or surviving spouse under this chapter to the extent required by a qualified domestic relations order. Rights under the order do not take effect until the order is filed with the administrator.

History - (Sec. 22 ch 117 SLA 1986; am Sec. 22 ch 106 SLA 1988)

Decisions - Cited in *Laing v. Laing*, 741 P.2d 649 (Alaska 1987).

SEC. 22.25.040. REFUND OF CONTRIBUTIONS. [REPEALED, SEC. 16 CH 83 SLA 1967].

Repealed or Renumbered

SEC. 22.25.041. REFUND OF CONTRIBUTIONS.

(a) Except as provided in (c) of this section, a justice or judge who vacates office for any reason and who has not then accrued five years of creditable service under this chapter is entitled to receive a refund of the total amount of contributions, including principal and interest payments on indebtedness, together with interest credited on the amount. To receive credit for an earlier period of service under AS 22.25.010(f), a justice or judge who has received a refund of contributions and who returns to active service shall repay in full, before appointment to retirement, the refunded contributions with interest at the prevailing rate.

(b) A justice or judge whose contributions have been involuntarily refunded because of a levy under AS 09.38.065 or because of a federal tax levy may repay the amount levied together with accrued interest whether or not the justice or judge is on active service. Repayments shall be made under (a) of this section.

(c) A justice or judge whose rights to a refund are subject to a qualified domestic relations order is entitled to receive a refund of the total amount of contributions, together with interest credited on the amount, only if the present spouse of the justice or judge, if any, and each person entitled under the order consent to the refund in writing on a form provided by the administrator. The

administrator may waive written consent from the person entitled to benefits under the order if the administrator determines that the person cannot be located or for other reasons established by regulation. The administrator may waive written consent from the spouse if the administrator determines that

(1) the justice or judge was not married to the spouse during any period of the justice's or judge's employment under this chapter;

(2) the spouse has no right to benefits under this chapter because of the terms of a qualified domestic relations order;

(3) the spouse cannot be located;

(4) the justice or judge and spouse have been married for less than two years and the justice or judge establishes that they are not cohabiting; or

(5) another reason established by regulation exists.

(d) Except as provided in this subsection and in AS 29.45.030(a)(1), amounts held in the system on behalf of a justice or judge or other person who is or may become eligible for benefits under the system are exempt from Alaska state and municipal taxes and are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before they are received by the person entitled to the amount under the terms of the system, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to amounts accrued in the system is void. However,

(1) the right of a justice or judge to receive benefits or the contributions and interest may be assigned

(A) under a qualified domestic relations order; or

(B) to a trust or similar legal device that meets the requirements for a Medicaid-qualifying trust under AS 47.07.020(f) and 42 U.S.C. 1396p(d)(4);

(2) a justice or judge may elect to have the taxable portion of the qualifying distributions transferred directly to another qualified plan or an individual retirement account that accepts the transfer.

History - (Sec. 7 ch 80 SLA 1978; am Sec. 3 ch 89 SLA 1988; am Sec. 22, 23 ch 68 SLA 2000)

Amendment Notes - The 2000 amendment, effective August 20, 2000, rewrote subsection (a); in subsection (b) inserted "under AS 09.38.065 or because of a federal tax levy"; and added subsections (c) and (d).


SEC. 22.25.045. APPROPRIATIONS. [REPEALED, SEC. 42 CH 146 SLA 1980].

Repealed or Renumbered

SEC. 22.25.046. EMPLOYER CONTRIBUTIONS.

(a) The state court system shall contribute to the judicial retirement system at the rate established by the commissioner of administration. The contribution rate shall be based on the results of an actuarial valuation of the judicial retirement system. The results of the actuarial valuation shall be based on actuarial methods and assumptions adopted by the commissioner of administration.

(b) The contribution rate shall be a percentage which, when applied to the covered compensation of all active members of the judicial retirement system, will generate sufficient money to support, along with contributions from members, the benefits of the judicial retirement system.


History - (Sec. 8 ch 146 SLA 1980)

SEC. 22.25.048. ACCOUNTING AND INVESTMENT.

(a) The commissioner of administration shall establish a judicial retirement trust fund for the judicial retirement system in which the assets of the system are deposited and held. The trust fund is subject to the restrictions of (h) of this section. The commissioner shall maintain accounts and records for the system.

(b) All income of the judicial retirement fund and all disbursements made from the fund shall be credited or charged, whichever is appropriate, to the following accounts:

(1) an individual account that contains the mandatory contributions collected from a person under AS 22.25.011;

(2) an account that is credited with the contributions of the state court system;

(3) a retirement reserve account; and

(4) an expense account for the judicial retirement system that shall be credited with funds transferred from the account described in (2) of this subsection.

(c) The Alaska State Pension Investment Board is the fiduciary of the fund and has the same powers and duties under this section in regard to the judicial retirement trust fund as are provided in AS 14.25.180.

(d) Within one year following retirement, an amount actuarially determined as necessary to pay fully for the benefits to be received by a person under this chapter shall be transferred first from the individual account described in (b)(1) of this section and, after the individual contributions have been exhausted, then from the court system account described in (b)(2) of this section, into the retirement reserve account described in (b)(3) of this section.

(e) The contributions of the court system to the retirement reserve account shall contain the actuarially determined amount necessary to fully fund the pension, death benefits, and other benefits paid under the judicial retirement system to a person under this chapter.

(f) The investment income of the judicial retirement fund shall be allocated in proportion to the balances of assets first to the retired reserve account described in (b)(3) of this section and then to the account described in (b)(2) of this section.

(g) The account described in (b)(4) of this section is charged with all disbursements representing the administrative expenses incurred by the judicial retirement system. Expenditures from this account shall be included in the budget of the governor for each fiscal year.

(h) The corpus or income of the assets held in trust as required by the system may not be diverted to or used for other than the exclusive benefit of the members or their beneficiaries.

(i) If the judicial retirement system is terminated,

(1) a member whose contributions have not been refunded, regardless of the member's employment status at the date of the termination of the system, shall be considered fully vested in the member's adjusted accrued retirement benefits as of the date of the termination of the system; and

(2) if all liabilities are satisfied, any excess assets arising from erroneous actuarial computation shall revert to the employer.

History - (Sec. 31 ch 137 SLA 1982; Sec. 10 ch 82 SLA 1986; am Sec. 14, 15 ch 141 SLA 1988; am Sec. 6 ch 31 SLA 1992; am Sec. 22, 23 ch 59 SLA 2002; am Sec. 18 ch 92 SLA 2004)

Amendment Notes - The 2002 amendment, effective June 20, 2002, added the second sentence in subsection (a) and added subsections (h) and (i).

The 2004 amendment, effective June 26, 2004, inserted subsection (i)(1) and made related changes.

Decisions - Cited in *Hudson v. Johnstone*, 660 P.2d 1180 (Alaska 1983).

**SEC. 22.25.050. - 22.25.070 FINANCING AND ADMINISTRATION;
CONTRIBUTIONS; TRANSFER OF CONTRIBUTIONS.
[REPEALED, SEC. 16 CH 83 SLA 1967].**

Repealed or Renumbered

SEC. 22.25.080. TAX EXEMPTION.

Benefits paid under this chapter are exempt from state and municipal income taxes.

History - (Sec. 4 ch 160 SLA 1972)

SEC. 22.25.090. MEDICAL BENEFITS.

(a) Except as provided in (d) of this section, the following persons are entitled to major medical insurance coverage:

(1) a person receiving a monthly benefit under this chapter;

(2) the spouse of a person receiving a monthly benefit under this chapter;

(3) a natural or adopted child of a person receiving a monthly benefit under this chapter, if the child is a dependent child under (c) of this section.

(b) Except as provided in (d) of this section, major medical insurance coverage takes effect on the same date as retirement benefits begin and stops when the retired person or survivor is no longer eligible to receive a monthly benefit. The coverage for persons age 65 or older is the same as that available for persons under 65 years of age. The benefits payable to those persons age 65 or older supplement any benefits provided under the federal old age, survivors, and disability insurance program. The medical premium and optional insurance premiums owed by a retired person or survivor shall be deducted from the benefit payable to the retired person or survivor before payment of the benefit.

(c) In this section, "dependent child" means an unmarried child of a justice, judge, or administrative director who is dependent on the justice, judge, or administrative director for support and who is either (1) less than 19 years old, or (2) less than 23 years old and registered at and attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education and Early Development. The age limits set out in this subsection do not apply to a child who is totally and permanently disabled.

(d) Receipt under a qualified domestic relations order of a monthly benefit from the system does not entitle a person or the person's spouse or child to

insurance coverage under (a) of this section. However, a member's former spouse who receives a monthly benefit under a qualified domestic relations order is entitled to receive major medical insurance coverage if the former spouse

(1) elects the coverage within 60 days after the first monthly benefit paid under the order is mailed first class or otherwise delivered; and

(2) pays the premium established by the administrator for the coverage.

(e) The administrator shall inform members who have requested appointment to retirement that the health insurance coverage available to retired members may be different from the health insurance coverage provided to employees. The administrator shall also notify those members of time limits for selecting optional health insurance coverage and whether the election is irrevocable. A member who has requested appointment to retirement shall indicate in writing on a form provided by the administrator that the member has received the information required by this subsection and whether the member has chosen to receive optional health insurance coverage.

History - (Sec. 4 ch 245 SLA 1976; am Sec. 32 ch 137 SLA 1982; am Sec. 23-25 ch 117 SLA 1986; am Sec. 2 ch 14 SLA 1992; am Sec. 24 ch 68 SLA 2000)

Revisors Notes - In 1999, "Department of Education" was changed to "Department of Education and Early Development" in (c) of this section in accordance with Sec. 89, ch. 58, SLA 1999.

Amendment Notes - The 2000 amendment, effective August 20, 2000, in subsection (b) inserted "years of age" in the second sentence and added the last sentence.

SEC. 22.25.100. EXEMPTION OF RETIREMENT FUNDS AND BENEFITS.

Employee contributions and other amounts held in the judicial retirement system and benefits payable under this chapter are exempt from garnishment, execution, and levy as provided in AS 09.38 (Alaska Exemptions Act).

History - (Sec. 2 ch 65 SLA 1991)

SEC. 22.25.110. SPECIAL RULES FOR TREATMENT OF QUALIFIED MILITARY SERVICE.

Notwithstanding any contrary provisions of this chapter, with respect to qualified military service, contributions shall be made and benefits and service credit shall be provided in accordance with 26 U.S.C. 414(u).

History - (Sec. 24 ch 59 SLA 2002)

Effective Date Notes - Section 50, ch. 59, SLA 2002 makes this section effective June 20, 2002, in accordance with AS 01.10.070(c).

SEC. 22.25.900. DEFINITIONS.

In this chapter, unless the context otherwise requires,

(1) "actuarial equivalent" means the adjustment necessary to obtain equality in value of the aggregate expected payments under two different forms of pension payments, considering expected mortality and interest earnings on the basis of assumptions, factors, and methods specified in regulations issued under the system that are formally adopted under AS 22.25.027 by the commissioner of administration that clearly preclude employer discretion in the determination of the amount of any justice's, judge's, or member's benefit;

(2) "judge" means a judge of the court of appeals, a superior court judge, or a district court judge;

(3) "justice" means a supreme court justice;

(4) "member" means an administrative director of the Alaska Court System who is eligible to participate in the system, a justice, or a judge;

(5) "qualified domestic relations order" means a divorce or dissolution judgment under AS 25.24, including an order approving a property settlement, that

(A) creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the member contributions and interest or benefits payable with respect to a justice or judge;

(B) sets out the name and last known mailing address, if any, of the justice or judge and of each alternate payee covered by the order;

(C) sets out the amount or percentage of the justice's or judge's benefit, or of any survivor's benefit, to be paid to the alternate payee, or sets out the manner in which that amount or percentage is to be determined;

(D) sets out the number of payments or period to which the order applies;

(E) sets out the plan to which the order applies;

(F) does not require any type or form of benefit or any option not otherwise provided by this chapter;

(G) does not require an increase of benefits in excess of the amount provided by this chapter, determined on the basis of actuarial value;

(H) does not require the payment, to an alternate payee, of benefits that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

History - Sec. 26 ch 117 SLA 1986; am Sec. 25 ch 68 SLA 2000; am Sec. 25 ch 59 SLA 2002; am Sec. 19 ch 92 SLA 2004)

Amendment Notes - The 2000 amendment, effective August 20, 2000, inserted "member contributions and interest or" in former paragraph (1).

The 2002 amendment, effective June 20, 2002, rewrote this section.

The 2004 amendment, effective June 26, 2004, rewrote paragraph (1).

Decisions - Cited in *Laing v. Laing*, 741 P.2d 649 (Alaska 1987).

TITLE 26. MILITARY AFFAIRS AND VETERANS.

CHAPTER 05. MILITARY CODES OF ALASKA

SEC. 26.05.222. CREATION AND ADMINISTRATION OF ALASKA NATIONAL GUARD AND ALASKA NAVAL MILITIA RETIREMENT SYSTEM.

(a) There is established an Alaska National Guard and Alaska Naval Militia retirement system. The commissioner of administration shall administer the Alaska National Guard and Alaska Naval Militia retirement system.

(b) The commissioner of administration may adopt regulations to implement the Alaska National Guard and Alaska Naval Militia retirement system. Regulations adopted by the commissioner under this subsection relate to the internal management of state agencies and their adoption is not subject to AS 44.62 (Administrative Procedure Act).

History - Sec. 17 ch 159 SLA 1972; am Sec. 9 ch 146 SLA 1980; am Sec. 33 ch 137 SLA 1982)

SEC. 26.05.223. COMMENCEMENT OF PARTICIPATION IN SYSTEM.

A member of the Alaska National Guard or Alaska Naval Militia shall be included in this system upon commencement of membership in the Alaska National Guard, or on January 1, 1973, whichever is later, or upon commencement of membership in the Alaska Naval Militia or on July 1, 1980, whichever is later.

History - (Sec. 17 ch 159 SLA 1972; am Sec. 10 ch 146 SLA 1980)

SEC. 26.05.224. RETIREMENT BENEFITS.

(a) An active member of the Alaska National Guard, or a former member who was an active member on or after January 1, 1969, or a member of the Alaska Naval Militia on or after July 1, 1980, is eligible for a retirement pension

(1) upon voluntary retirement from the Alaska National Guard or Alaska Naval Militia after a total of 20 years or more of satisfactory service in the Alaska National Guard, Alaska Naval Militia, or the armed forces of the United States, and the reserves of them, or any combination of service in these components if at least five years of the service is in the Alaska National Guard or Alaska Naval Militia; or

(2) upon involuntary separation because of federal standards imposed on the Alaska National Guard or Alaska Naval Militia, regardless of length of service, unless the separation occurs as a result of the member's own misconduct, misrepresentation, or unwillingness to satisfy established standards for continued participation.

(b) The retirement pension is \$100 a month, payable for the same number of months that the member participated satisfactorily in the Alaska National Guard or Alaska Naval Militia. The member may instead elect to receive the retirement pension

(1) in a lump sum that is actuarially determined to be equal to the value, at the time of retirement, of the entire pension due; or

(2) in a monthly amount that will result in payment by the member's 72nd birthday of an amount that is determined to be the actuarial equivalent of the entire pension due at the time of retirement.

(c) An eligible member or former member may elect to receive the retirement pension beginning on the first day of the month in which the member or former member becomes eligible for retirement, or the member or former member may elect to defer payment to a later date. Payment of a deferred retirement benefit may not begin until application for the benefit is filed with and approved by the Department of Military and Veterans' Affairs. Deferred retirement payments shall be made monthly at the rate of \$100, unless the member elects another form of payment under (b) of this section.

(d) Upon the death of an active member who has at least five years service in the Alaska National Guard or Alaska Naval Militia or a combination of these components, the member's designated beneficiary is entitled to a lump sum benefit calculated in accordance with (b) of this section. Upon the death of a former member who has at least 20 years service, the former member's designated beneficiary is entitled to a lump sum benefit calculated in accordance with (b) of this section less any retirement benefits previously paid. Except as provided in (e) of this section, a member may change or revoke the designation of a beneficiary without notice to the beneficiary at any time. If a member designates more than one beneficiary, each shares equally unless the member specifies a different allocation. The member shall make a designation of a beneficiary or a change or revocation of a beneficiary on a form provided by the Department of Military and Veterans' Affairs. It is not effective until filed with the Department of Military and Veterans' Affairs. If a member fails to designate a beneficiary or if no designated beneficiary survives the member, the department, except to the extent provided otherwise in a qualified domestic relations order, shall pay the death benefit under this subsection to the

- (1) surviving spouse; or, if there is none surviving,
- (2) surviving children in equal parts; or, if there is none surviving,
- (3) surviving parents in equal parts; or, if there is none surviving,
- (4) member's estate.

(e) Notwithstanding any previous designation of beneficiary, the spouse of a member at the time of the member's death automatically becomes the designated beneficiary if the spouse was married to the member during part of the member's service under this chapter

(1) except to the extent a qualified domestic relations order provides for payment to a former spouse or other dependent of the member; or

(2) unless the member files with the Department of Military and Veterans' Affairs a revocation of beneficiary and a written consent to the revocation signed by the present spouse and each person entitled to benefits under the order on forms provided by the department; however, consent of the present spouse is not required if the member and the present spouse had been married for less than two years on the date of the member's death and if the member established when filing the revocation that the member and the spouse were not cohabiting.

(f) A person claiming entitlement to any benefits payable under this section shall provide the department with a marriage certificate, divorce or dissolution decree, or other evidence of entitlement. Documents showing entitlement may be filed with the department immediately after a change in the member's marital status. If the department does not receive notification of a claim before the date 10 days after the member's death, the person claiming entitlement to the benefits is not entitled to receive from the Department of Administration or Department of Military and Veterans' Affairs any benefit already paid under this section.

(g) Except as provided in this subsection or AS 29.45.030(a)(1), amounts held in the system on behalf of a member or other person who is or may become eligible for benefits under the system are exempt from Alaska state and municipal taxes and are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before they are received by the person entitled to the amount under the terms of the system, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to amounts accrued in the system is void. However,

(1) a member's right to receive benefits or the member contribution account may be assigned

(A) under a qualified domestic relations order; or

(B) to a trust or similar legal device that meets the requirements for a Medicaid-qualifying trust under AS 47.07.020(f) and 42 U.S.C. 1396p(d)(4);

(2) a member may elect to have the taxable portion of the qualifying distributions transferred directly to another plan or individual retirement arrangement qualified under the federal Internal Revenue Code.

(h) Amounts held in the system and benefits payable under this section are exempt from garnishment, execution, or levy as provided in AS 09.38 (Alaska Exemptions Act).

History - (Sec. 17 ch 159 SLA 1972; am Sec. 11, 12 ch 146 SLA 1980; am Sec. 1 ch 140 SLA 1984; am E.O. No. 58, Sec. 4, 5 (1984); am Sec. 11 ch 82 SLA 1986; am Sec. 29, 30 ch 117 SLA 1986; am Sec. 1, 2 ch 41 SLA 1988; am Sec. 26 ch 68 SLA 2000)

Amendment Notes - The 2000 amendment, effective August 20, 2000, added subsections (g) and (h).

Decisions - Cited in *Laing v. Laing*, 741 P.2d 649 (Alaska 1987).

SEC. 26.05.225. EARLIER SERVICE.

A person who was a member of the Alaska National Guard on or after January 1, 1969, is entitled to credit for service to the state and former territory of Alaska as a member of the National Guard and Territorial Guard before and after January 1, 1969, in determining eligibility for retirement benefits under AS 26.05.224.

History - (Sec. 17 ch 159 SLA 1972; am Sec. 13 ch 146 SLA 1980)

SEC. 26.05.226. CONTRIBUTIONS.

(a) The Department of Military and Veterans' Affairs shall contribute to the Alaska National Guard and Alaska Naval Militia retirement system the amounts determined by the commissioner of administration as necessary to

(1) fund the system based on the actuarial requirements of the system as established by the commissioner of administration; and

(2) administer the system.

(b) The amount required for contributions from the Department of Military and Veterans' Affairs under (a) of this section shall be included in the annual appropriations made to the Department of Military and Veterans' Affairs.

History - (Sec. 17 ch 159 SLA 1972; am Sec. 14 ch 146 SLA 1980; am Sec. 34 ch 137 SLA 1982; am E.O. No. 58, Sec. 6 (1984))

SEC. 26.05.227. [RENUMBERED AS AS 26.05.229].

Repealed or Renumbered

SEC. 26.05.228. ACCOUNTING AND INVESTMENT.

(a) The commissioner of administration shall establish a military retirement trust fund for the system in which the assets of the system are deposited and held. The commissioner shall maintain accounts and records for the system.

(b) All income of the fund and all disbursements made by the fund shall be credited or charged, whichever is appropriate, to the following accounts:

(1) an individual account for each retired member of the system that records the benefits paid under this system to the member or surviving beneficiary;

(2) a separate account for the Department of Military and Veterans' Affairs' contribution to fund the system based on the actuarial requirements of the system as established by the commissioner of administration under this chapter;

(3) an expense account for the system; this account is charged with all disbursements representing administrative expenses incurred by the system; expenditures from this account are included in the governor's budget for each fiscal year.

(c) The Alaska State Pension Investment Board is the fiduciary of the fund and has the same powers and duties under this section in regard to the fund as are provided under AS 14.25.180.

History - (Sec. 36 ch 137 SLA 1982; E.O. No. 58, Sec. 7 (1984); am Sec. 12 ch 82 SLA 1986; am Sec. 16, 17 ch 141 SLA 1988; am Sec. 7 ch 31 SLA 1992)

SEC. 26.05.229. DEFINITIONS.

In AS 26.05.222 - 26.05.228,

(1) "beneficiary" means a person designated by a member in a writing filed with the system by the member while alive to receive benefits that may be due from the system upon the death of the member;

(2) "member" means a commissioned or warrant officer or an enlisted person in the Alaska National Guard or Alaska Naval Militia;

(3) "qualified domestic relations order" means a divorce or dissolution judgment under AS 25.24, including an order approving a property settlement, that

(A) creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a member;

(B) sets out the name and last known mailing address, if any, of the member and of each alternate payee covered by the order;

(C) sets out the amount or percentage of the member's benefit, or of any survivor's benefit, to be paid to the alternate payee, or sets out the manner in which that amount or percentage is to be determined;

(D) sets out the number of payments or period to which the order applies;

(E) does not require any type or form of benefit or any option not otherwise provided by AS 26.05.222 - 26.05.228;

(F) does not require an increase of benefits in excess of the amount provided by AS 26.05.222 - 26.05.228, determined on the basis of actuarial value; and

(G) does not require the payment, to an alternate payee, of benefits that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order;

(4) "system" means the Alaska National Guard and Alaska Naval Militia retirement system.

History - (Sec. 17 ch 159 SLA 1972; am Sec. 15 ch 146 SLA 1980; am Sec. 35 ch 137 SLA 1982; am Sec. 31 ch 117 SLA 1986)

Revisors Notes - Formerly AS 26.05.227. Renumbered in 1986. Reorganized in 1986 to alphabetize the defined terms.

Decisions - Cited in *Laing v. Laing*, 741 P.2d 649 (Alaska 1987).

TITLE 37. PUBLIC OFFICERS AND EMPLOYEES.

CHAPTER 39.37. ELECTED PUBLIC OFFICERS RETIREMENT SYSTEM [REJECTED AT REFERENDUM].

Cross References - For provisions concerning qualified domestic relations orders, taxation, assignment, execution, transfer, insurance, and related matters under the elected public officers retirement system, see sec. 58, ch. 68, SLA 2000, in the 2000 Temporary and Special Acts. For required notice regarding medical benefits under former AS 39.37.145, see Sec. 4, ch. 14, SLA 1992 in the Temporary and Special Acts; for alternate benefits for certain EPORS members, see AS 39.35.389; for adoption of regulations relating to former AS 39.37, see Sec. 4, ch. 35, SLA 1984 in the Temporary and Special Acts.

Administrative Code - For elected public officers retirement system, see 2 AAC 37, art. 2.

Editors Notes - Chapter 205, SLA 1975, which added this chapter, was submitted to the voters by referendum and was rejected. The rejected chapter was amended by Sec. 8, ch. 218, SLA 1976; Sec. 2, ch. 254, SLA 1976; Sec. 3, ch. 245, SLA 1976.

In *State v. Allen*, Sup. Ct. Op. No. 2278, 625 P.2d 844 (1981), the supreme court held that all elected officials who were participating in the elected public officers retirement system at the time the repeal became effective [October 14, 1976], are entitled to the benefits provided by that system upon retirement.

THE PROVISIONS OF THIS CHAPTER READ AS FOLLOWS:

SEC. 39.37.010. APPLICATION.

This chapter applies to persons who are elected public officers on January 1, 1976 and to persons who become elected public officers after January 1, 1976. (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.020. RETIREMENT OF ELECTED PUBLIC OFFICERS.

An elected public officer is eligible for retirement pay if he has had five or more years of service at the time of retirement as an elected public officer. (Sec. 8 ch 205 SLA 1975)

Sec. 39.37.030. Retirement for incapacity. An elected public officer who has served for a period of five years, and who believes that he has become so incapacitated as to prevent him from efficiently performing his duties, may file a written application for retirement which contains a sworn statement of his service and of his incapacity. When an application is filed, a board of three

persons to inquire into the circumstances shall be appointed by the chief justice of the state supreme court, and the commissioner of administration upon the board's recommendation shall retire the elected public officer. The effective date of the retirement shall be the first day of the month following the recommendation of the board. (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.040. VOLUNTARY RETIREMENT.

(a) An elected public officer may voluntarily retire at any time and shall have a vested right to his accrued retirement pay if he has served five years or more. Retirement pay shall not begin until he has reached age 60, except that an actuarially equivalent retirement pay may be begun after he has reached age 55 or upon attaining 20 years of creditable service. The provisions of AS 39.37.030 are an exception to this rule.

(b) An elected public officer desiring to retire under this section shall file with the commissioner of administration an application for retirement.

(c) If an elected public officer is eligible to receive retirement pay at the time of his retirement, his retirement pay shall begin on the first day of the month following termination of office. If an elected public officer is not eligible to receive retirement pay at the time of his retirement, his retirement pay shall begin on the first day of the month he reaches age 60 or at age 55 with an actuarially reduced benefit. (Sec. 8 ch 205 SLA 1975; am Sec. 8 ch 218 SLA 1976)

SEC. 39.37.050. BENEFIT FORMULA.

(a) A person retired under the provisions of this chapter shall receive from the effective date of his retirement until his death monthly compensation equal to a percent of either (1) the monthly salary and additional allowances established under AS 24.10.110 authorized for the office from which he retired at the time each retirement payment is made; or (2) his average monthly compensation as defined in AS 39.35.680. At the time the official applies for retirement, he shall elect to have his benefits computed under either (1) or (2) of this subsection. The election is irrevocable.

(b) The percent shall be five percent per year of membership service and the percent per year of other creditable service equal to the benefit formula used for years of creditable service under AS 39.35 prevailing at the time of retirement.

(c) The total percentage under (b) of this section shall not exceed 75 percent. (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.060. SURVIVORS' BENEFITS.

(a) Upon the death of an elected public officer who has served at least two years, the surviving spouse is entitled to receive monthly compensation equal to one-half of the monthly retirement pay the elected public officer would thereafter have been entitled to receive if retired at the time of death. If at death the elected public officer was not yet entitled to retirement pay, or was or would have been entitled to less than 60 percent of the monthly salary authorized for his office, the surviving spouse is entitled to monthly compensation equal to 30 percent of the monthly salary authorized for the office at the time each retirement payment is made or 30 percent of his average monthly compensation as defined in AS 39.35.680.

(b) To be eligible for the survivors' benefits, the surviving spouse must have been married to the elected public officer for at least two years immediately preceding the death of the elected public officer. The benefits continue until the remarriage or death of the surviving spouse.

(c) If there is no surviving spouse, or if the surviving spouse does not meet the requirements of (b) of this section, or upon the remarriage or death of the surviving spouse, the surviving dependent child or children of the elected public officer are entitled to receive in equal shares 50 percent of the amount of the survivors' benefits specified under (a) of this section.

(d) The surviving child or children are entitled to the survivors' benefits under (c) of this section during the period of their dependency. Dependency exists with respect to any child of an elected public officer who is either (1) a minor under the laws of Alaska; (2) under the age of 23 and is a student attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education; or (3) so mentally or physically incapacitated as to be unable to provide for self-care.

(e) If there are both an eligible surviving spouse and surviving dependent children, but who reside in separate households, the surviving spouse will receive one-half of the benefits payable under (a) of this section and the dependent children will share equally in the remainder of the benefits.

(f) Upon the death of an elected public officer who has served at least two years, if the death occurred after June 28, 1975 but before January 1, 1976, the surviving spouse is entitled to the benefits provided in this chapter including the benefits which would have accrued under this section had the elected public officer died after January 1, 1976. If the elected public officer would have been entitled, before the expiration of the term to which he was elected, to service credit by complying with the provisions of AS 39.37.070, the surviving

spouse is entitled to that service credit if any payments required under this section are made before the date on which the term would have expired. If this payment is made, the benefits are in addition to the benefits provided in this section. (Sec. 8 ch 205 SLA 1975; am Sec. 2 ch 254 SLA 1976)

SEC. 39.37.070. CONTRIBUTIONS.

(a) Each elected public officer shall contribute seven percent of his compensation to the retirement system.

(b) An elected public officer participating in the retirement system established under this chapter is entitled to service credit for creditable service to the state, territory, or political subdivision before January 1, 1976 for each year of such service for which he has accrued service credit under AS 39.35.

(c) An elected public officer participating in the retirement system established under this chapter may become entitled to service credit for creditable service to the state, territory or political subdivision before January 1, 1976 for which he has not accrued service credit under AS 39.35 by complying with the following:

(1) if the prior creditable service was covered under AS 39.35 at the time it was rendered, he shall pay contributions for each year of seven percent of the compensation received at the time service was rendered; or

(2) if the prior creditable service was not covered under AS 39.35 at the time service was rendered, he shall pay contributions of seven percent of his compensation at the time he makes application under (d) of this section; or

(3) if the service was as an elected public officer, he shall pay contributions at the rate of seven percent of the amount of salary actually paid during the period.

(d) To receive service credit under (c) of this section, an elected public officer must make application within 60 days of becoming a participant in the retirement system established under this chapter.

(e) Each public officer who has accrued five years or more of membership service shall contribute to the retirement system seven percent of compensation received thereafter for all creditable service and is entitled to benefits as provided in this chapter.

(f) The compensation applicable to a member of the legislature making a contribution under (a) of this section is the sum of the legislative salary and additional allowances established under AS 24.10.100 and 24.10.110.

(g) The contribution is made in the form of a payroll deduction and is made notwithstanding that the compensation paid in cash to the elected public officer is reduced below the minimum prescribed by law. Each elected public officer is considered to consent to the deduction made from his compensation. Payment of compensation less the deduction prescribed in (a) of this section and other payroll deductions constitutes a full and complete discharge and satisfaction of all claims and demands for the services rendered by him during the period covered by the payment, except as to the benefits provided for under this chapter. (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.080. ADMINISTRATION.

“The commissioner of administration is responsible for the administration of the system. (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.090. REGULATIONS.

The commissioner may promulgate regulations to implement the provisions of this chapter. Regulations adopted by the commissioner under this chapter relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act (AS 44.62). (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.100. TAX EXEMPTION.

Benefits paid under this chapter are exempt from state and municipal taxes. (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.110. APPROPRIATIONS.

An estimated amount sufficient to pay all benefits, including interest credited to individual accounts, anticipated to be paid under this chapter in each fiscal year shall be included in the annual appropriation to the Department of Administration. If the actual authorized benefits necessary to be paid in any fiscal year exceed the sum appropriated, the benefits due shall nevertheless be paid from general funds of the state not otherwise appropriated. (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.120. ACCOUNTING.

(a) The elected public officers retirement account shall be established to which all appropriations under this chapter shall be credited.

(b) An individual account shall be maintained for each elected public officer to which the amount of his mandatory contributions collected under this chapter shall be credited as of the date of deduction or payment, as the case may be. As of the last day of each calendar year and each fiscal year beginning with

June 30, 1976, this account shall be credited with interest by applying one-half of the prescribed rate of interest to the balance in the account as of that date.

(c) Upon commencement of retirement pay to an elected public officer, the balance in his individual account shall be transferred to the elected public officers retirement account.

(d) Upon commencement of participation in this retirement system, any balance in an elected public officer's individual account under AS 39.35 is transferred to his individual account under this section. (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.130. REFUNDS.

Upon termination of creditable service, application may be made for a refund of the balance in the individual's account. Upon withdrawal of the balance, all rights to benefits terminate. (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.140. PRIOR SERVICE CREDIT.

In the event an elected public officer who has withdrawn the balance of his individual account returns to elected public office, he shall receive credit for his prior period or periods of service only if he repays within one year of the date of return all refunded contributions with interest at the prevailing prescribed rate. (Sec. 8 ch 205 SLA 1975)

SEC. 39.37.145. MEDICAL BENEFITS.

Each person who is entitled to receive a monthly benefit from the retirement system under this chapter shall be provided with major medical insurance coverage. Coverage shall become effective on the same date as retirement benefits commence and cease when the retired employee or survivor is no longer eligible to receive a monthly benefit. The level of coverage for persons over age 65 shall be the same as that available before reaching age 65 except that the benefits payable shall be supplemental to those afforded under the federal Old Age Survivor and Disability Insurance Program, if any. (Sec. 3 ch 245 SLA 1976)

SEC. 39.37.150. DEFINITIONS.

In this chapter

(1) "elected public officer" means the governor, lieutenant governor, or a member of the legislature;

(2) "creditable service" means service as an elected public officer

and other service to the state, territory, or political subdivision under which benefits presently accrue under AS 39.35;

(3) “membership service” means service as an elected public officer. (Sec. 8 ch 205 SLA 1975)”

Section 51, ch. 117, SLA 1986, provides:

Notwithstanding former AS 39.37.060(b), the surviving spouse of an elected public officer who has retirement rights under the Elected Public Officers Retirement System is eligible for survivors' benefits under former AS 39.37.060 if the surviving spouse was married to the elected public officer for at least one year immediately preceding the death of the elected public officer. The benefits continue until the remarriage or death of the surviving spouse.

Section 5, ch. 89, SLA 1988 provides:

Notwithstanding former AS 39.37.130 and 39.37.140, a former member of the Elected Public Officers Retirement System who received an involuntary refund of the individual's account because of a levy may repay the amount levied together with accrued interest. Upon payment of the full amount owing, the former member regains all rights that were terminated because of the refund.

Section 35, ch. 106, SLA 1988 provides:

Notwithstanding former AS 39.37.060 and sec. 51, ch. 117, SLA 1986, the surviving spouse of an elected public officer who has retirement rights under the Elected Public Officers' Retirement System is eligible to continue receiving survivors' benefits upon remarriage. If there is no surviving spouse or surviving dependent child entitled to benefits under former AS 39.37.060 or if, after payment of all survivors' benefits due under former AS 39.37.060, less than the amount of contributions made by the elected public officer under former AS 39.37.070 and interest credited has been paid, the difference between the amount of contributions and the amount of benefits paid shall be paid to the designated beneficiary of the elected public officer. If there is no designated beneficiary or if no designated beneficiary survives the elected public office, the balance of the contributions and interest credited shall be paid to the

- (1) surviving spouse; or, if there is none surviving,
- (2) surviving children in equal parts; or, if there is none surviving,
- (3) surviving parents in equal parts; or, if there is none surviving,
- (4) elected public officer's estate.

Section 1, ch. 91, SLA 2001 reads as follows:

Retirement benefits under elected public officers retirement system for certain benefit recipients. - (a) For a member of the elected public officers retirement system who has been receiving benefits under former AS 39.37.050(a)(1) for at least 10 years, if the monthly salary and, if appropriate, the additional allowances established under AS 24.10.110, authorized for the office from which the member retired has not

increased in at least 10 years, the monthly benefit payable to the member or the member's survivor under former AS 39.37 (elected public officers retirement system) shall be increased as set out in this section. The amount of the increase is an amount equal to the monthly benefit to which the member or survivor is entitled multiplied by 75 percent of the percentage increase in the cost of living since the benefit was last adjusted under this section or former AS 39.37.050(a)(1) or since the member retired under former AS 39.37, whichever is later.

(b) Notwithstanding former AS 39.37.050(a)(1), if a benefit is increased under (a) of this section and if the monthly salary and, if appropriate, the additional allowances established under AS 24.10.110, authorized for the office from which a member retired is subsequently increased, the member's or survivor's benefit under former AS 39.37 may not be increased until the increase in benefits based on former AS 39.37.050(a)(1) equals or exceeds the increase based on (a) of this section. If benefits based on former AS 39.37.050(a)(1) increase to more than the increased benefit computed under (a) of this section, the member or survivor is entitled to receive an additional increase based on the difference between the two amounts.

(c) The administrator of the public employees' retirement system shall implement this section.

(d) When computing a survivor's benefit under former AS 39.37.060, adjustments granted to the deceased member or survivor under this section shall be included.

(e) An increase in benefit payments under this section is effective July 1 of each calendar year and is based on the percentage increase in the consumer price index for urban wage earners and clerical workers for Anchorage, Alaska, during the previous calendar year, as determined by the United States Department of Labor, Bureau of Labor Statistics.

(f) In this section, "system" means the elected public officers retirement system under former AS 39.37.

Decisions - "Employee retirement system". - The Elected Public Officers Retirement System is an "employee retirement system" within the meaning of Alaska Const., art. XII, Sec. 7, which provides that membership in state employee retirement systems shall constitute a contractual relationship. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

There is no valid basis upon which to distinguish the rights of elected officials in the Elected Public Officers Retirement System from their rights in the public employees' retirement system in the context of Alaska Const., art. XII, Sec. 7. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Contractual relationship. - The Elected Public Officers Retirement System constitutes a contractual relationship between participants in that program and the state of Alaska, which must be honored by the state. Therefore, all elected officials who were participating in the Elected Public Officers Retirement System at the time its repeal became effective [October 14, 1976] will be entitled to the benefits provided by that system upon retirement. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Effective period of ch. 205, SLA 1975. - Walters v. Cease, 388 P.2d 263 (Alaska 1964), which held that the effectiveness of an act passed by the legislature is not suspended during the period between its effective date and its rejection by referendum,

clearly establishes that the legislation enacting this chapter, ch. 205, SLA 1975, whatever its import, was in full force from January 1, 1976, its effective date, until October 14, 1976, the date of repeal by referendum. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Rights not subject to implied condition subsequent of repeal. - Even though a referendum petition was duly filed over three months before the effective date of this chapter Jan. 1, 1976 , the rights accrued under the Elected Public Officers Retirement System were not subject to any implied condition subsequent of repeal by the electorate, and those rights remain fully enforceable. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Even assuming the extreme likelihood of the subsequent repeal of a legislative enactment, Alaska Const., art. XII, Sec. 7, and AS 01.10.100(a) preclude the finding of an implicit condition subsequent in the contracts between participants in the Elected Public Officers Retirement System and the state of Alaska, since AS 01.10.100(a) provides that "[t]he repeal ... of any law does not release or extinguish any ... liability incurred or right accruing or accrued under such law" and finding a condition subsequent to be implicit in the contract under consideration would undermine Alaska Const., art. XII, Sec. 7. State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981).

Regulations

JUDICIAL, ELECTED PUBLIC OFFICERS, AND NATIONAL GUARD/ NAVAL MILITIA RETIREMENT

TITLE 2. ADMINISTRATION

CHAPTER 37. JUDICIAL, ELECTED PUBLIC OFFICERS, AND NATIONAL GUARD/NAVAL MILITIA RETIREMENT SYSTEMS

Article

1. Judicial Retirement System. (2 AAC 37.010 - 2 AAC 37.090)
2. Elected Public Officers Retirement System.
(2 AAC 37.100 - 2 AAC 37.120)
5. National Guard/Naval Militia Retirement System.
(2 AAC 37.260 - 2 AAC 37.270)

ARTICLE 1. JUDICIAL RETIREMENT SYSTEM

Section

10. Voluntary retirement for incapacity.
20. Prescribed rates of interest.
25. Benefit adjustments.
27. Qualified domestic relations orders (QDROs).
30. Employer contributions.
35. Actuarial adjustment factor basis.
90. Leave without pay.

2 AAC 37.010. VOLUNTARY RETIREMENT FOR INCAPACITY

(a) When an application for voluntary retirement for incapacity under AS 22.25.010(c) is submitted to the governor by a justice or judge, the governor shall appoint a board of three persons to inquire into the circumstances. The board consists of disinterested persons as follows:

(1) a physician licensed to practice in the State of Alaska;

(2) a retired justice or judge, or if a retired justice or judge is unavailable to serve, a retired or active attorney licensed to practice in the State of Alaska; and

(3) a member of the public at large.

(b) Members of the board appointed under (a) of this section serve without compensation, except that they may be reimbursed for actual and necessary expenses at the rate established in AS 39.20.180. Expenses of the board are charged to the judicial retirement system.

(c) The applicant shall provide sufficient documentation to the board appointed under (a) of this section to support his or her request and may appear before the board on his or her own behalf with or without assistance of counsel.

(d) The board appointed under (a) of this section may meet as often as necessary to conduct the inquiry under this section. The board will, at its discretion, hear any evidence which it finds to be relevant and reliable, without regard to formal rules of evidence. All meetings of the board are open to the public as required by AS 44.62.310, except that a meeting or portion of a meeting held solely to deliberate on the evidence heard will, at the board's discretion, be limited to the board members and their staff, if any. If the justice or judge requests that any other portion of a meeting be closed to the public, the board will, at its discretion, exclude the public as long as necessary to hear the reason for the request. The board shall grant the request if it finds that the evidence to be presented would, if made public, cause such embarrassment or damage to personal reputation that it would violate the individual's right to privacy under article I, section 22, of the Alaska Constitution.

(e) The board appointed by the governor to inquire into the circumstances surrounding a justice's or judge's application for voluntary retirement for incapacity shall recommend approval of the request if it finds the following circumstances to exist:

(1) the justice or judge is presently suffering a physical or mental disability that substantially impairs his or her ability to perform judicial duties fully; and

(2) the justice or judge is not likely to recover sufficiently to resume judicial duties within a period of time during which the court system may both provide compensation to the justice or judge through the granting of sick leave under court Administrative Rule 28 and effectively handle court business through the temporary assignment of retired or active justices or judges under court Administrative Rule 23 or 24; this period of time shall be determined by the court system at the request of the board appointed under (a) of this section.

(f) The board shall report its findings and recommendations to the governor within 60 days of appointment. Copies of the board's findings and recommendation must be provided to the justice or judge. The governor shall advise the Department of Administration and the justice or judge of his or her

decision within 30 days of receipt of the board's recommendation. The board is dissolved upon filing by the governor of a written declaration under AS 22.25.010 or as otherwise ordered by the governor.

(g) A justice or judge who is retired under this regulation is eligible for judicial assignment under court Administrative Rule 23 upon the finding of a licensed physician that he or she is able to efficiently perform judicial duties.

History: In effect before 1/8/85, Register 93

Authority: AS 22.25.010 AS 22.25.027

2 AAC 37.020. PRESCRIBED RATES OF INTEREST

(a) The prescribed rate of interest to be credited to each member's account in the judicial retirement system is four and one-half percent. One-half of this prescribed rate shall be credited to each member's account semiannually on June 30 and December 31 of each year. The rate of interest is effective July 1, 1981.

(b) The prescribed rate of interest that accrues on any indebtedness owed to the judicial retirement system (AS 22.25) is seven percent compounded semiannually on June 30 and December 31 of each year.

(c) Interest shall be charged on amounts owed to the judicial retirement system by a member, survivor, or beneficiary if the amount owed is the result of erroneous information supplied by the member, survivor or beneficiary, or if the member, survivor, or beneficiary had reasonable grounds to believe that the amount of the benefit was in error. Interest accrues from the date on which the correct payment was due and continues until an actuarial adjustment to the benefit is effective or the amount owed is paid.

(d) The prescribed rate of interest that accrues on an amount owed by the judicial retirement system to a member, survivor, or beneficiary of the system is seven percent compounded semiannually on June 30 and December 31 of each year. Interest accrues from the date on which the correct payment was due and continues until an actuarial adjustment to the benefit is effective or the amount owed is paid.

History: In effect before 1/8/85, Register 93; am 12/28/86, Register 108

Authority: AS 22.25.025 AS 22.25.027 AS 22.25.041

2 AAC 37.025. BENEFIT ADJUSTMENTS

(a) A benefit overpayment to a benefit recipient of the judicial retirement system must be recovered by applying a lifetime actuarial reduction to the benefit recipient's future monthly benefits, unless the benefit recipient elects to pay the overpayment in a lump sum.

(b) A benefit underpayment must be paid to the recipient

(1) by applying a lifetime actuarial increase to the recipient's future monthly benefits if the underpayment exceeds \$3,500, unless the recipient elects to receive a lump sum payment; or

(2) by lump sum if the underpayment is \$3,500 or less.

(c) The division will notify the recipient by certified mail of the overpayment or underpayment amount. The recipient must irrevocably elect a payment option under (a) or (b)(1) of this section within 60 days after receipt of the division's notice. Failure of the recipient to notify the division of a payment option election and to pay the lump sum overpayment, if applicable, by either hand delivering or mailing written notification and payment, which must be received or postmarked within 60 days after the recipient's receipt of the division's notice, will result in a lifetime actuarial reduction or increase to the recipient's monthly benefit.

(d) The lifetime actuarial monthly benefit reduction or increase is calculated by multiplying the amount of the overpayment or underpayment, including interest if applicable, by the appropriate actuarial factor for the recipient's age at the time of the adjustment. The most advantageous table of factors adopted during the member's judicial retirement system employment will be used to calculate the actuarial reduction or increase to the recipient's future monthly benefits.

History: Eff. 12/28/86; am 5/11/88, Register 108

Authority: AS 22.25.025 AS 22.25.027

Editor's note: 2 AAC 37.025 was not published in the AAC before Register 108.

2 AAC 37.027. QUALIFIED DOMESTIC RELATIONS ORDERS (QDROs).

(a) After a member is divorced or the member's marriage is dissolved, the member's former spouse has no individual rights or entitlements to benefits from the system, but may, under a qualified domestic relations order, share in the stream of benefit payments paid to the member. To be valid and enforced by the administrator, a qualified domestic relations order must conform to

both the requirements of AS 22.25 and the requirements of the United States Internal Revenue Code that the system must comply with in order to maintain its federal tax-qualified status.

(b) An alternate payee

(1) may only be the former spouse of a member who has been named by an order of a court of competent jurisdiction to receive all or a portion of the member's retirement benefit;

(2) may not name survivors or beneficiaries to the alternate payee's portion of the member's benefit;

(3) will not be provided medical or insurance benefits at the system's expense but may purchase coverage from the system at the full calculated cost to the system; the alternate payee must elect to purchase the coverage within 60 days after appointment to benefits.

(c) The administrator shall review all domestic relations orders that the administrator receives, and shall reject a domestic relations order that does not meet the requirements of AS 22.25 or this chapter. A qualified domestic relations order that is accepted by the administrator is effective on the first day of the month following the month in which the order is accepted, or on the date of retirement, whichever is later. The administrator shall accept only a domestic relations order that is prospective. The administrator shall reject an order that

(1) purports to have a retroactive effective date;

(2) orders payment of the alternate payee's benefits to someone other than the member upon the death of the alternate payee;

(3) orders payment of benefits to an alternate payee, other than survivor benefits, after the death of the member.

(d) The administrator shall approve a domestic relations order that orders payment of a monthly benefit to an alternate payee only if the alternate payee's portion of the member's monthly stream of benefit payments is expressed as a set monthly dollar amount, as a percentage of the monthly benefit payment, or as a monthly formula based on a defined period of time divided by the member's total years of credited service.

(e) Unless a qualified domestic relations order specifically states otherwise, the administrator shall follow the following rules in implementing qualified domestic relations orders:

(1) no death or survivor benefits shall be paid to the alternate payee if the member dies before retirement;

(2) no survivor benefits shall be paid to the alternate payee;

(3) remarriage of the alternate payee does not in any way reduce or eliminate the alternate payee's entitlement to benefits.

(f) If a member divorces after the member has retired or if a member's marriage is dissolved after the member has retired, the member's spouse at the time of death will retain sole rights to survivor benefits except to the extent that a qualified domestic relations order requires payment of survivor benefits to an alternate payee.

(g) A lump sum payment to an alternate payee under a qualified domestic relations order may be made only if the member elects a full withdrawal from membership in the judicial retirement system. Lump sum entitlements in a qualified domestic relations order must be stated either as a specific dollar amount or as a specific percentage of the member's contribution account.

(h) A qualified domestic relations order affecting disability benefits under AS 22.25.010 shall be accepted by the administrator only after the member has been appointed to disability.

History: (Eff. 8/13/2005, Register 175)

Authority: AS 22.25.035 AS 22.25.900

2 AAC 37.030. EMPLOYER CONTRIBUTIONS

The contributions of the court system must be transmitted to the division of retirement and benefits on a monthly basis within thirty days after the close of each payroll period for which the contributions are being made.

History: In effect before 1/8/85, Register 93

Authority: AS 22.25.025 AS 22.25.027 AS 22.25.046

2 AAC 37.035. ACTUARIAL ADJUSTMENT FACTOR BASIS.

The basis of the assumptions for the reduced benefit actuarial adjustment factors for an early retirement benefit,

(1) before July 1, 1981 is a factor that reduces the normal retirement amount by 0.5 percent per month for each month that the retirement precedes the normal retirement age;

(2) on or after July 1, 1981 but before August 1, 1983, is a unisex factor set using a 50 percent to 50 percent blend of male and female rates from

the 1971 Group Annuity Mortality Table, table GA71U, with an annual interest rate of 6.25 percent;

(3) on or after August 1, 1983, is for an early retirement benefit, a unisex factor set using a 50 percent to 50 percent blend of male and female rates from the 1971 Group Annuity Mortality Table, table GA71U, with an annual interest rate of 8.30 percent.

History: (Eff. 8/13/2005, Register 175)

Authority: AS 22.25.025 AS 22.25.027

2 AAC 37.090. LEAVE WITHOUT PAY

A period of leave without pay (LWOP) is not creditable service in the judicial retirement system. Member and employer contributions may not be made for a period of leave without pay.

History: In effect before 1/8/85, Register 93

Authority: AS 22.25.025 AS 22.25.027

ARTICLE 2. ELECTED PUBLIC OFFICERS RETIREMENT SYSTEM

Section

100. Reemployment of retired members of EPORS.

110. Prescribed interest rates.

120. Benefit adjustments.

2 AAC 37.100. REEMPLOYMENT OF RETIRED MEMBERS OF EPORS

(a) If a retired member of EPORS returns to employment that is included in the definition of "creditable service" under AS 39.37.150, retirement payments will not be made during the time of reemployment. During the time of reemployment the member shall contribute to EPORS under AS 39.37.070.

(b) Upon retirement by a formerly retired member of EPORS who returned to EPORS employment, payment of the original EPORS retirement benefit will resume, effective the first day of the month following the termination of reemployment. The computation and amount of the original benefit will not be altered. The retiree is entitled to an additional and separate benefit based on the creditable service earned during the period of reemployment and the benefit formula as it exists at the time of termination under AS 39.37.050. The retiree is entitled to the salary option under AS 39.37.050(a) for the new benefit only.

History: In effect before 1/8/85, Register 93

Authority: AS 39.37.050 AS 39.37.090

2 AAC 37.110. PRESCRIBED INTEREST RATES

(a) The prescribed rate of interest to be credited to each member's account in the elected public officers retirement system is four and one-half percent. One-half of this prescribed rate is credited to each member's account semiannually on June 30 and December 31 of each year. This rate of interest is effective January 1, 1976.

(b) The prescribed rate of interest that accrues on any indebtedness owed to the elected public officers retirement system (AS 39.37) is seven percent compounded semiannually on June 30 and December 31 of each year.

(c) Interest shall be charged on amounts owed to the elected public officers retirement system by a member, survivor, or beneficiary if the amount owed is the result of erroneous information supplied by the member, survivor, or beneficiary, or if the member, survivor, or beneficiary had reasonable grounds to believe that the amount of the benefit was in error. Interest accrues from the

date on which the correct payment was due and continues until an actuarial adjustment to the benefit is effective or the amount owed is paid.

(d) The prescribed rate of interest that accrues on an amount owed by the elected public officers retirement system to a member, survivor, or beneficiary of the system is seven percent compounded semiannually on June 30 and December 31 of each year. Interest accrues from the date on which the correct payment was due and continues until an actuarial adjustment to the benefit is effective or the amount owed is paid.

History: In effect before 1/8/85, Register 93; am 11/28/86, Register 108

Authority: AS 39.37.090 AS 39.37.120 AS 39.37.140

2 AAC 37.120. BENEFIT ADJUSTMENTS

(a) A benefit overpayment to an EPORS benefit recipient must be recovered by applying a lifetime actuarial reduction to the benefit recipient's future monthly benefits, unless the benefit recipient elects to pay the overpayment in a lump sum.

(b) A benefit underpayment must be paid to the recipient

(1) by applying a lifetime actuarial increase to the recipient's future monthly benefits if the underpayment exceeds \$3,500, unless the recipient elects to receive a lump sum payment; or

(2) by lump sum if the underpayment is \$3,500 or less.

(c) The division will notify the recipient by certified mail of the overpayment or underpayment amount. The recipient must irrevocably elect a payment option under (a) or (b)(1) of this section within 60 days after receipt of the division's notice. Failure of the recipient to notify the division of a payment option election and to pay the lump sum overpayment, if applicable, by either hand delivering or mailing written notification and payment, which must be received or postmarked within 60 days after the recipient's receipt of the division's notice, will result in a lifetime actuarial reduction or increase to the recipient's monthly benefit.

(d) The lifetime actuarial monthly benefit reduction or increase is calculated by multiplying the amount of the overpayment or underpayment, including interest if applicable, by the appropriate actuarial factor for the recipient's age at the time of the adjustment. The most advantageous table of factors adopted during the member's EPORS employment will be used to calculate the actuarial reduction or increase to the recipient's future monthly benefits.

History: Eff. 11/28/86; am 4/11/88, Register 108

Authority: AS 39.37.080 AS 39.37.090

Editor's note: 2 AAC 37.120 was not published in the AAC before Register 108.

ARTICLE 5. NATIONAL GUARD/NAVAL MILITIA RETIREMENT SYSTEM

Section

260. Prescribed rates of interest.

270. Benefit adjustments.

2 AAC 37.260. PRESCRIBED RATES OF INTEREST

(a) The prescribed rate of interest that accrues on an indebtedness owed to the national guard/naval militia retirement system (AS 26.05) is seven percent compounded semiannually on June 30 and December 31 of each year.

(b) Interest shall be charged on amounts owed to the national guard/naval militia retirement system by a member, survivor, or beneficiary if the amount owed is the result of erroneous information supplied by the member, survivor, or beneficiary, or if the member, survivor, or beneficiary had reasonable grounds to believe that the amount of the benefit was in error. Interest accrues from the date on which the correct payment was due and continues until an actuarial adjustment to the benefit is effective or the amount owed is paid.

(c) The prescribed rate of interest that accrues on an amount owed by the national guard/naval militia retirement system to a member, survivor, or beneficiary of the system is seven percent compounded semiannually on June 30 and December 31 of each year. Interest accrues from the date on which the correct payment was due and continues until an actuarial adjustment to the benefit is effective or the amount owed is paid.


History: Eff. 11/28/86, Register 100


Authority: AS 26.05.222

2 AAC 37.270. BENEFIT ADJUSTMENTS

(a) A benefit overpayment to a benefit recipient of the national guard/ naval militia retirement system must be recovered by applying a lifetime actuarial reduction to the benefit recipient's future monthly benefits, unless the benefit recipient elects to pay the overpayment in a lump sum.

(b) A benefit underpayment must be paid to the recipient

(1) by applying a lifetime actuarial increase to the recipient's future monthly benefits if the underpayment exceeds \$3,500, unless the recipient elects to receive a lump sum payment; or

(2) by lump sum if the underpayment is \$3,500 or less.

(c) The division will notify the recipient by certified mail of the overpayment or underpayment amount. The recipient must irrevocably elect a payment option under (a) or (b)(1) of this section within 60 days after receipt of the division's notice. Failure of the recipient to notify the division of a payment option election and to pay the lump sum overpayment, if applicable, by either hand delivering or mailing written notification and payment, which must be received or postmarked within 60 days after the recipient's receipt of the division's notice, will result in a lifetime actuarial reduction or increase to the recipient's monthly benefit.

(d) The lifetime actuarial monthly benefit reduction or increase is calculated by multiplying the amount of the overpayment or underpayment, including interest if applicable, by the appropriate actuarial factor for the recipient's age at the time of the adjustment. The most advantageous table of factors adopted during the member's national guard/naval militia retirement system service will be used to calculate the actuarial reduction or increase to the recipient's future monthly benefits.

History: Eff. 11/28/86; am 4/11/88, Register 108

Authority: AS 26.06.222

Editor's note: 2 AAC 37.270 was not published in the AAC before Register 108.

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